

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NEIL GAIMAN and
MARVELS AND MIRACLES, L.L.C.,

Plaintiffs,

v.

TODD MCFARLANE,
TODD MCFARLANE PRODUCTIONS, INC.,
TMP INTERNATIONAL, INC.,
MCFARLANE WORLDWIDE, INC., and
IMAGE COMICS, INC.,

Defendants.

Case No.: 02-C-0048-S

**JOINT STIPULATION OF PLAINTIFFS AND
THE MCFARLANE DEFENDANTS REGARDING THE PROCEDURE FOR
DETERMINING ACCOUNTING OF PROFITS**

Plaintiffs Neil Gaiman ("Gaiman") and Marvels and Miracles, LLC and defendants Todd McFarlane, Todd McFarlane Productions, Inc., TMP International, Inc., and McFarlane Worldwide, Inc. (collectively "the McFarlane Defendants"), hereby stipulate and agree as follows:

Should the Court or Jury render a verdict or judgment (the "Verdict or Judgment") that Gaiman is an owner of the copyright/s to one or more of the publications or characters at issue in this action and ordering an accounting of the profits earned by one or more of the McFarlane Defendants from those publications or characters, the amount of those profits shall not be a jury question. Instead, within 14 days of issuance of the Verdict or Judgment, whichever is earlier, Plaintiffs and the McFarlane Defendants shall serve on each other a list of three accountants or accounting firms whom they propose to perform an accounting of the profits

earned by the appropriate McFarlane Defendants from the relevant publications or characters. Within 14 days of being served with the lists, the previously-designated damages experts for Plaintiffs and the McFarlane Defendants shall make a good faith effort to jointly select one accountant or accounting firm from the six submitted by the Parties to perform the accounting of profits. Should the Parties' experts be unable, in good faith, to reach agreement, then each expert shall select one accountant or accounting firm from the opposing party's list and one of those two accountants/firms (the "Accountant") shall be selected through the toss of a coin.

Within 10 days of issuance of the Verdict or Judgment, the Parties shall serve and file with the Court all motions, supporting briefs and other materials regarding any legal or factual issues the Parties believe must be resolved prior to the Accountant performing the accounting. The Parties shall have 10 days from the date of service of such motions to serve and file any responses to such motions. The Parties shall have 5 days from the date of service of the responses to serve and file any replies.

The Accountant shall perform the accounting in accordance with any rulings by the Court on the above motions.

The Accountant shall submit to the Parties a description of the procedures to be used in performing the accounting. Within 10 days of receiving the description of procedures, each party may submit a list of objections and/or proposed changes to those procedures. The Parties shall in good faith attempt to reach agreement regarding each party's objections and proposed changes. However, should the Parties be unable to reach agreement on any of the Accountant's procedures, the Accountant shall have the final decision regarding those procedures on which the Parties disagree.

Within 14 days of receiving the Accountant's accounting of profits, each party may submit a list of objections to that accounting. In the absence of any objections by the Parties, the accounting shall be final (the "Final Accounting"). If any of the Parties submit objections to the Accounting, within 7 days of receiving those objections, the Accountant shall inform the Parties of whether the Accountant will revise its accounting in light of any of those objections. Should the Accountant revise its accounting in light of the Parties' objections, that revised accounting shall be the Final Accounting.

Within 10 days of receiving the Final Accounting, Plaintiffs shall serve and file with the Court a proposed judgment to be entered against the McFarlane Defendants with regard to the accounting for profits. Plaintiffs may also serve and file a brief and other supporting materials as necessary. Within 10 days of being served with the proposed judgment, brief and supporting materials, the McFarlane Defendants may serve and file a brief in response and supporting materials. Within 5 days of being served with the McFarlane Defendants' response, Plaintiffs may file a brief in reply and supporting materials. The Court may then enter judgment as it deems appropriate.

The Parties shall each pay for one-half of the Accountant's total fees, costs, and expenses charged for performing the accounting.

By stipulating to the above procedures, the Parties do not waive any right to appeal any rulings by the Court regarding legal issues relevant to the Accounting. However, the Parties waive the right to appeal any accounting decisions, procedures or actions by the Accountant relating to the Accounting, including the amount of the Final Accounting.

Subject to the limitations set forth in the previous paragraph, the parties agree that the Court may enter a final judgment regarding any verdicts, decisions, or orders, including any

order ordering an accounting of profits, at any time the Court deems appropriate and that any party may appeal such a final judgment prior to the completion of the accounting.

Dated this 21st day of September, 2002.

FOLEY & LARDNER

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By: 

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Chicago, IL 60611

Dated this ____ day of September, 2002.

LAFOLLETTE, GODFREY & KAHN, S.C.

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Dated this ____ day of September, 2002.

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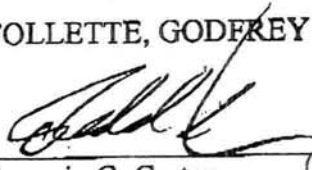
Dated this 27th day of September, 2002.

LAFOLLETTE, GODFREY & KAHN, S.C.

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